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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 GEOFF MCPHERSON and ROSEANN
9 MCPHERSON,

10 Plaintiffs,

11 v.

12 HOMEWARD RESIDENTIAL, et al.,

13 Defendants.

CASE NO. C12-5920 BHS

ORDER GRANTING
PLAINTIFFS' MOTION FOR AN
INJUNCTION

14 This matter comes before the Court on Plaintiffs Geoff and Roseann McPherson's
15 ("McPherson") motion for a temporary restraining order (Dkt. 28). The Court has
16 considered the pleadings filed in support of the motion and the remainder of the file and
17 hereby grants the motion for the reasons stated herein.

18 **I. PROCEDURAL HISTORY**

19 On September 26, 2012, the McPhersons filed a complaint in Pierce County
20 Superior Court for the State of Washington. Dkt. 1-2. The McPhersons allege that
21 Defendants have violated the Washington Consumer Protection Act, RCW Chapter
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1 19.86; violated the Washington Deed of Trust Act (“DTA”), RCW Chapter 61.24; and
2 committed common law negligence, fraud, and misrepresentation. *Id.*

3 On October 16, 2012, Defendants removed the matter to this Court. Dkt. 1.

4 On December 10, 2012, the parties submitted a stipulated motion to temporarily
5 enjoin the Trustee’s sale pursuant to the DTA. Dkt. 15. The Court issued the order the
6 next day. Dkt. 16. The injunction was set to automatically dissolve upon the earlier of
7 March 9, 2013, or the McPhersons obtaining a loan modification. *Id.* The parties agreed
8 that the McPhersons would deposit monthly payments of \$1,277.00 into the Court
9 registry as a condition of enjoining the sale. *Id.* If they failed to make a payment, the
10 injunction would automatically dissolve and Defendants would be entitled to schedule a
11 foreclosure sale in accordance with the requirements of the DTA. *Id.*

12 On August 19, 2013, the McPhersons filed a motion for a temporary restraining
13 order to enjoin a Trustee’s sale set for August 23, 2013. Dkt. 28.

14 **II. DISCUSSION**

15 Under the DTA, a court may enjoin a trustee’s sale for any legal or equitable
16 ground. RCW 61.24.130(1). As a condition of such restraint, the court must require the
17 borrower to deposit monthly payments into the court’s registry. *Id.*

18 If the restraining order or injunction is dissolved after the date of the
19 trustee’s sale set forth in the notice as provided in RCW 61.24.040(1)(f),
the court granting such restraining order or injunction, or before whom the
order or injunction is returnable, shall, at the request of the trustee, set a
new sale date which shall be not less than forty-five days from the date of
the order dissolving the restraining order.
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1 RCW 61.24.130(3). The Court is unable to find and is unaware of any authority
2 interpreting this provision of the DTA. In the absence of specific authority, the general
3 rules apply. The Washington Supreme Court

4 has frequently emphasized that the deed of trust act must be construed in
5 favor of borrowers because of the relative ease with which lenders can
6 forfeit borrowers' interests and the lack of judicial oversight in conducting
7 nonjudicial foreclosure sales.

8 *Klem v. Washington Mut. Bank*, 176 Wn.2d 771, 789 (2013) (citations and quotations
9 omitted). As applied to RCW 61.24.130(3), the trustee is required to ask the court that
10 issued the injunction to reset the trustee's sale because the DTA must be strictly
11 construed to compensate for the lack of judicial oversight.

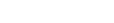
12 In this case, the trustee has unilaterally proceeded with a foreclosure sale after an
13 injunction dissolved. Such unilateral action provides the Court with a legal ground to
14 enjoin the pending sale. Therefore, the Court grants the McPhersons' motion for a
15 temporary restraining order because the trustee failed to technically comply with the
16 DTA. As a requirement of the injunction, the McPhersons must make monthly deposits
17 of \$1277.00 into the Court's registry beginning September 1, 2013 and continuing on the
18 first of every month thereafter.

19 The Court declines to consider or pass upon any other issue presented in the
20 McPhersons' motion. These issues will preferably be considered and ruled upon in the
21 normal course of this proceeding with respect to every party's due process rights.
22

III. ORDER

2 Therefore, it is hereby **ORDERED** that the McPhersons' motion for a temporary
3 restraining order is **GRANTED**. This injunction shall dissolve (1) automatically if the
4 McPhersons fail to make monthly deposits or (2) further order of the Court either *sua
5 sponte* or upon request from the trustee pursuant to RCW 61.24.130(3).

6 Dated this 21st day of August, 2013.


BENJAMIN H. SETTLE
United States District Judge